

Tax Bulletin

Missouri Department of Revenue

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Summer 2000

Directly Speaking . . .



Have you ever completed a major home improvement project? You know, the kind upon which you spend all your free time and money. I'm in the middle of such a project right now. Lately, I've begun to notice similarities between that challenge and our improvement efforts at the Department of Revenue.

For example, at home, I try to focus, as you would, on improving the most important things first. We look for the project that gives the quickest, biggest bang for the buck. On the house, these are the



things people see every day. Teams at the department have done the same, working with customers and suppliers for over two years to improve our highest-volume products. They've done a great job.

During this recent tax season, our speed of refunds and deposits were faster than ever and among the fastest in the nation. With the advice of tax professionals and other customers, the Sales and Use Tax Regulation (SURG) team has developed a new, easier to use format for this information. They have replaced 120 duplicative, unclear or incorrect regulations with 23 new and improved regulations that should be more helpful to you and others. An Audit Team has already begun to make improvements that will expedite the audit process and improve taxpayer education. Other improvements are in the works.

A home improvement project is similar to our efforts at the department in a second way. The completion of many improvements lets us see more clearly the need to complete the projects that remain. While departmental projects over the next year may not affect as many people as those who filed over 2.5 million individual income tax returns this year, these remaining initiatives are vital to world-class performance. During the coming year, we will be focusing on business tax processes. This challenge is especially important as we face the task of simplifying franchise, corporate and sales taxes. In the sales tax arena, Missouri has also joined a nationwide project to reduce the cost of collecting these taxes.

A third similarity between improving "this old house" and the department relates to the length of the job. For example, at the house, the first priority was refinishing the wood floors. So we had someone who really knew the job do that first. Then the baseboards and walls looked even dingier in comparison, so a painter did that job. (I even helped.) Then, even though the ceilings didn't look that bad at first, it was obvious that a coat of paint would help, especially relative to everything else. So that was done. That's not too different from the department where, based on identifying other opportunities for improvement, our improvement effort is becoming a permanent process.

Finally, having already worked for what seemed like forever on the house, despite all my moaning and groaning, I began to notice something odd. With so many improvements completed, and the house looking so much better, I can't imagine stopping before the job's done. And I've noticed something similar here at work. The progress we've enjoyed to date has not come easy. Many Revenue people have worked very hard. But I don't see anyone ready to give up. I'm sure it's not wishful thinking on my part. The people of Revenue are more committed to progress every day. We're fortunate to have them working for you, as I'm sure you will agree when you experience the benefits of their achievements.

As with everything we've done, I thank you for your involvement. The advice and involvement we've received from people like you have helped keep us on-target.

Quentin Wilson

Quentin Wilson, Director of Revenue

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Sales Taxation of Shipping and Handling Charges

by Jay Welch, (816) 889-2901

As part of the department's efforts to redraft the sales and use tax regulations, a team is drafting a new rule on Sales of Tangible Personal Property and Services. The purpose of this new regulation, 12 CSR 10-103.600, is to explain which charges are subject to tax when a transaction involves the sale of tangible personal property and a nontaxable service. The taxation of shipping, handling, minimums, gratuities and similar charges is addressed in the rule.

If the purchaser is required to pay for these services as part of the sale price of tangible personal property, the entire sale price is subject to tax. If the purchaser is not required to pay the service charge as part of the sale price of tangible personal property, the amount paid for the service is not subject to tax if the charge for such service is separately stated. If the charge for the service is not separately stated, the entire sale price is subject to tax.

Sales tax is imposed upon the seller's gross receipts multiplied by the corresponding tax rate. Section 144.010.1(3) RSMo, defines "Gross Receipts" as "the total amount of the sale price of the sales at retail including any services other than charges inci-

dent to the extension of credit that are a part of such sales made by the businesses . . . "

The taxable gross receipts are the amounts received by the seller. Taxable gross receipts do not include charges for the extension of credit. Separately stated finance charges that are in addition to the sale price are not part of the taxable gross receipts.

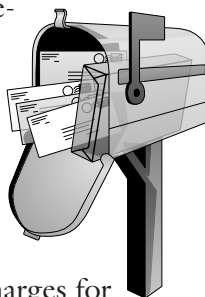
A point frequently confused is whether labor or freight charges are taxable.

Generally, charges for production or fabrication labor incurred to produce a product are taxable. Separately stated labor service charges, other than production or fabrication labor, are not taxable. See *Laciny Bros., Inc. v. Director of Revenue*, 869 S.W.2d 761 (Mo. banc 1994), *Robertson, Steve d/b/a Robertson's Creative Photography*, (AHC 1994), and *Howard Buick Oldsmobile Inc. v. Director of Revenue*, (AHC).

Whether charges for delivery or freight are taxable depends upon whether the parties intend those receipts to be part of the sale price. Separately stated freight or delivery charges are not tax-

able if the parties intend that the portion of the receipts related to the freight or delivery is not part of the sale price. The Missouri Supreme Court has addressed this issue in several cases. See *Brinson Appliance, Inc. v. Director of Revenue*, 843 S.W.2d 50 (Mo. banc 1992), *Southern Red-E-Mix Co. v. Director of Revenue*, 894 S.W.2d 164 (Mo. banc 1995), *May Department Stores Co. v. Director of Revenue*, 748 S.W.2d 174 (Mo. banc 1988) and *Kurtz Concrete, Inc. v. Spradling*, 560 S.W.2d 858 (Mo. banc 1978).

The Court has set forth several factors to be considered in determining if the freight charges are intended to be part of the sale price: when title passes to the purchaser, whether delivery charges are separately stated on the sales invoice, whether the method of delivery is entirely up to the purchaser, whether the purchaser has the option to take the tangible personal property, hire a carrier or use a carrier selected by the seller, whether the seller derives any financial benefit from the delivery and undertakes any risk for damage or loss during delivery, and whether there is a written agreement between the parties. In *Consolidated Fuel Corp. v.*



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Missouri Department of Revenue

Mel Carnahan, Governor; Quentin Wilson, Director of Revenue; Carol Russell Fischer, Director, Division of Taxation and Collection

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SIMPLIFY

Use Tax

by Dave Zanone, (573) 751-4906

Since 1994, Missouri law relieves a purchaser of tangible personal property from filing a use tax return until purchases from out-of-state sellers where tax was not paid exceed \$2,000 in a calendar year. The law is an exclusion from filing but not a \$2,000 use tax exemption. Therefore, it is important for individuals and businesses to know when to file a use tax return and the correct amount to report once a return is filed.

Until a taxpayer exceeds \$2,000 in purchases, that taxpayer should not file consumer's use tax figures on a return. If the purchaser completes a use tax return and purchases have not yet exceeded the \$2,000 threshold for the calendar year, the purchaser should check the box on the

return marked "I do not have cumulative taxable purchases totaling more than \$2,000 this calendar year and do not owe Consumer's Use Tax at this time." **Do not** enter figures on the consumer's use tax line. Taxpayers often mistakenly believe they must complete the consumer's use tax lines even if their cumulative purchases are less than \$2,000.



However, once a taxpayer has filed a return reporting consumer's use tax figures, that taxpayer is obligated to remit the applicable tax. Failing to remit the tax will result in a delinquency. Additionally, once the tax has been reported and paid, the department cannot

issue a refund, even if cumulative purchases reported on the return do not exceed the \$2,000 filing threshold.

Once a taxpayer exceeds \$2,000 in taxable purchases, the taxpayer must file a return to include the first \$2,000. Returns must be filed on a quarterly basis. For example, a business makes taxable purchases of \$1,900 through May of a calendar year. In June, the business makes a \$200 taxable purchase. The business is now required to file a second quarter return and must report \$2,100 in taxable purchases.

Remembering the law is a \$2,000 exclusion from filing and not an exemption will prevent taxpayers from making errors resulting in unnecessary tax liability.

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Director of Revenue (AHC 1993), the separately stated freight charge to deliver natural gas to consumers in Missouri was held taxable. The customers could not choose the delivery method because there was only one carrier, the gas pipeline, serving their location. The transportation charges were part of the sale price, whether separately stated or not. On a similar note, the *Missouri Supreme Court in Oakland Park Inn v. Director of Revenue*, 822 S.W.2d 425 (Mo. banc 1982) held that mandatory gratuities for restaurant food service were taxable. The charges were intended to be part of

the sale price for the food because they were not optional.

If the purchaser is required to pay for shipping and handling charges as part of the sale price for goods and the charges are for a set amount, are not optional and are not related to the volume of goods purchased, the entire sale price is subject to tax. If the method of delivery is optional to the purchaser and the purchaser is not required to pay for the shipping and handling charges as part of the sale price, the amount paid for these charges is not subject to tax if the charges are separately stated. If the charges are not separately stated, the entire

sale price is subject to tax.

Regulation 12 CSR 10-103.600 (4)(B) provides an example to clarify this point:

A person purchases a compact disc (CD) through a mail order club.

The seller charges a set amount for shipping and handling the CD. Because the buyer is required to pay the shipping and handling charge, the entire amount charged, including the shipping and handling, is subject to tax.

The new rule is intended to clarify the department's current position on taxability of shipping and handling charges.

Working Together to Resolve Delinquent Sales Tax Accounts

by Dave Zanone, (573) 751-4906

One of the department's goals is to resolve delinquent sales tax accounts as quickly as possible. Resolving the account early prevents a taxpayer from exposure to the law's more punitive provisions. One provision that adversely affects some taxpayers is the filing of liens against taxpayers' real and personal property.

When a taxpayer incurs a delinquency for a tax period, the department issues an assessment or, in the case where the taxpayer failed to file a return, an estimated assessment. The assessment informs the taxpayer that if the delinquency is not resolved or appealed, the department will file tax liens on the owner's real and personal property. The taxpayer has sixty days to file an appeal of the assessment. If the appeal period ends and the amount is not resolved or appealed, the department files tax liens against the owner's real and personal property. A lien is filed against the sole owner, the corporation or the partners, depending on the business' ownership type.

The department mails a Certificate of Tax Lien to the county recorder of deeds and a Notice of Tax Lien to the taxpayer. The lien also becomes a part of the taxpayer's credit report.



The taxpayer must pay the tax, interest, penalty and lien fees, or establish there is no liability, before the lien is released. Once the taxpayer resolves the delinquency, the department will issue a Certificate of Tax Lien Release to the recorder of deeds in each county in which a lien was filed and a notice of Tax Lien Release to the taxpayer. The lien release will also appear on the taxpayer's credit report.

The department will expunge a lien under certain circumstances. The difference between an expungement and a release is an expungement clears the taxpayer's record as if the lien had never been filed. The department must expunge the lien if it was erroneously or improvidently filed. For instance, a taxpayer may submit payment prior to the lien date, but the department does not receive or process it until after the lien is generated by our computer system. Under this circumstance, the department would expunge the lien. Additionally, the business may establish there was no liability for the period in which the lien was filed. The lien would be expunged.

If at all possible, it is best to resolve a delinquency when first notices are received. Liens impact the taxpayer's credit rating and avoiding the lien is in both the taxpayer's and the department's best interest.

Tax Bulletin Subscriber

Would you like to receive your next *Tax Bulletin* online at no cost through the department's web site? To enroll, follow these simple instructions — send an email to: majordomo@mail.state.mo.us and include subscribe tax-practitioners in the body of the

email. Within a couple of days you will receive a confirmation of enrollment and you will begin receiving the department periodic distributions including the *Tax Bulletin* and the monthly tax calendar.

Withholding of Tax by Nonresident Professional Athletic Teams

by Diane Luebbering, (573) 751-4981

All nonresident professional athletic teams are considered transient employers as defined in Section 285.230, RSMo, and are required to file a financial assurance instrument pursuant to Section 285.230 RSMo.

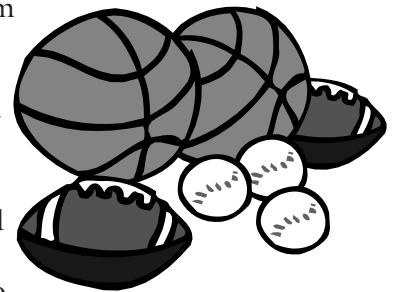
The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team. Nonresident members of professional athletic teams include players, managers, coaches, trainers, traveling secretaries, players on the disabled list (if they are in uniform on the day of the game at the site of the game) and any others traveling with and performing services on behalf of the team.

All nonresident members of professional athletic teams are taxed on that portion of their personal service income allocable to Missouri. Personal service income includes exhibition and regular playing season salaries and wages, guaranteed payments, strike benefits, deferred payments, severance pay, bonuses paid for playing in championship, playoff or bowl-type games, and any other type of compensation paid to the nonresident team member in that capacity.

The personal service income earned by nonresident members of professional athletic teams allocable to Missouri is determined by a fraction. The denominator of the fraction is the total number of duty days in the tax year of the athlete (including the sum of days spent at training camps, all postseason games and travel days). The numerator is the number of duty days in the tax year that the nonresident member of the professional athletic team spent in Missouri.

Any out-of-state professional athletic team that qualifies as a transient employer as specified in Section 285.230

RSMo, is required to withhold Missouri income taxes from wages and salaries paid to its team members. Every out-of-state professional athletic team required to deduct and withhold tax must file an employer's withholding tax return and pay the taxes withheld to the Director of Revenue.



Withholding of Tax by Nonresident Professional Entertainers

by Diane Luebbering, (573) 751-4981

Any individual or entity who pays compensation to a nonresident professional entertainer(s) is required to withhold Missouri income taxes, as a prepayment of tax, at a rate of two percent (2%) of the total compensation paid to the nonresident entertainer for entertainment performed in Missouri.

Every individual or entity required to deduct and withhold tax from a nonresident



entertainer, must, for each calendar quarter, on or before the last day of the month following the close of that calendar quarter, file Form MO-1ENT, Income Tax Payments for Nonresident Entertainers, with copies of Form MO-2ENT, Statement of Income Tax Payments for Nonresident

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Letter Rulings*by General Counsel's Office, (573) 751-2633*

The following is a list of the letter rulings issued during the period of March 23, 2000 to June 1, 2000.

LETTER #	DESCRIPTION
2076	Manufacturing — Steel Products — Piston Rings
2100	Manufacturing — Fertilizer
2105	Sprayed-On Bed Liners for Truck Beds
2106	Materials Used in Producing Newspapers
2143	Manufacturing — Paint Mixing
2153	Sales By Not-For-Profit Organization
2156	Trailers and Installation Charges
2161	Grain Bins
2162	Pressurization for Water Service
2163	Religious Organization — Bookstore Sales
2181	Dairy Farm Sanitation Supplies and Products
2194	Repair Services
2205	Engineering Firm Exemption
2206	Place Of Amusement — Fees Charged to Film Distributors
2207	Material Recovery Processing Plants — Tire Retreading
2214	Annual Fee for Software Maintenance and Support
2223	Wheelchair Rental, Sales of Wheelchair Lifts and Ramps
2224	Membership Dues
2225	Late Fees For Video Rentals
2232	Manufacturing — Air Conditioning System for Plant
2233	Sale of Food Service on Behalf of Exempt Entities
2241	Software, Maintenance and Support Services
2263	Electroplating Services
2264	Veterinarian Supplies
2273	Printed Advertising Materials
2290	Equipment Rental — Damage Waiver Charges
2293	Financial Institution Tax
2332	Oxygen and Related Equipment
2345	Food and Drink Purchases by Not-For-Profit Corporation
2346	Internet Fees
2365	Heating/Cooling Units



Copies of the sanitized version of these letter rulings are available at a cost of \$1.10 plus sales tax of 6.225% each by writing to the Department of Revenue, General Counsel's Office, P.O. Box 475, Jefferson City, MO 65105-0475. Copies may also be obtained at no cost from the department's Internet web page <http://dor.state.mo.us>.

**State Holidays**

State offices will be closed in observance of the following holidays.

September 4 Labor Day

October 9 Columbus Day



COURT CASES

by General Counsel's Office, (573) 751-2633

INCOME TAX

Robert K. Gabel v. Director of Revenue, Case No. 99-1291 RI (AHC, 5/13/2000).

Robert K. Gabel (Taxpayer) was employed in Cleveland, Ohio, from 1976 to 1993 when he was transferred to Kansas City, Missouri. Taxpayer had begun participating in his employer's 401(k) plan in 1984. While a resident of Ohio, Taxpayer borrowed money from his 401(k) plan to make a down payment on a house and for payment on a car. Taxpayer's employment with the company ended in May 1996. Taxpayer and his family lived in Missouri for all of 1996.

In 1996, Taxpayer put his 401(k) funds in a retirement account with a local bank, whereupon he withdrew \$10,000 from the retirement account and was issued a Form 1099-R indicating a taxable distribution. The outstanding loan balance for the withdrawal from the 401(k) plan was discharged in 1996 and Taxpayer received a Form 1099-R indicating a taxable distribution from the plan from his employer.

On Taxpayer's 1996 income tax return, he included the distribution and discharge on his federal return. On his 1996 Missouri return he subtracted these items as a federal obligation interest exemption.

The director disallowed the subtraction and assessed a deficiency.

The Administrative Hearing Commission (AHC) held that Taxpayer was not entitled to deductions related to his retirement accounts because Missouri statutes do not provide for deductions or exemptions upon early termination of employment or early distributions. No Missouri statute grants Taxpayer a deduction or exemption on the grounds that contributions to his retirement plan were made when he was not a resident of this state.

Because Taxpayer was not entitled to deductions or exemptions for the withdrawal or discharge, the AHC held that the taxpayer was liable for the tax assessed plus interest.

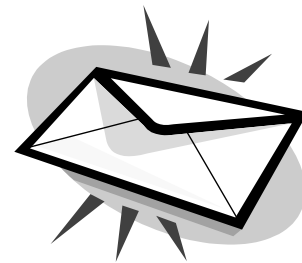


SALES/USE TAX

Zip Multi-Sort Systems, Inc. v. Director of Revenue, 97-2269RV (AHC 1999).

Zip Multi-Sort Systems, Inc. (Taxpayer) was engaged in the business of manufacturing and selling bar coding and mail sorting machines. The machines would place a bar code on each envelope. The bar code contained different information including the name and address of the addressee. The department conducted an audit of the

Taxpayer's business records and assessed it use taxes on its sales of mail sorting and bar coding machinery and various parts. The Taxpayer appealed the assessments to the Administrative Hearing Commission (AHC).



The Taxpayer argued that its sales of the mail sorting equipment and parts were exempt from use tax because the machines were exempt under Section 144.030.2(5), RSMo. It also contended that many of its sales were not subject to Missouri sales tax because it had no business location in this state at the time of the sales, and it contended that many of the sales were sales in interstate commerce. Finally, it argued that the department erroneously assessed tax on advance payments for machinery and equipment and improperly taxed management fees.

The AHC found that all sales made before July 1994 were not Missouri sales because the business was not located in this state at that time. The AHC also found that some of the transactions were sales in commerce

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between this state and other states and therefore were not subject to tax pursuant to Section 144.030.1, RSMo. It also found that the department incorrectly assessed tax on amounts that were advance payments. The AHC did not rule on whether the Taxpayer's machinery and equipment was used to manufacture a product. Instead, it found that the Taxpayer's purchases were not exempt under either Section 144.030.2(4) or (5), RSMo, because even if it were engaged in manufacturing, the equipment was not used to manufacture a product that was sold. One of the requirements of the exemptions is that the purchaser uses the equipment to manufacture a product for sale.



INCOME TAX

Estill G. and Judy J.

George v. Director of Revenue, Case No. 99-0497 RI (AHC, 3/15/2000).

Judy J. George (Taxpayer) was a resident of Kansas in 1990 when she signed her house back to the bank. In 1991, Taxpayer moved to Missouri and married. The bank was sold to United Missouri Bank in 1994. The Taxpayer and her spouse filed a 1995 Missouri income tax return, but did not pay the stated liability. In 1998, the director received information from the IRS that the Taxpayer had 1995 income from the discharge of a debt,

as well as interest income and unemployment compensation. Based on the federal changes, the director issued a notice of adjustment and a final decision for the tax additions.

The Administrative Hearing Commission held that the IRS's determination of federal adjusted gross income was not binding. It concluded Taxpayer's discharge of indebtedness occurred in 1990. Because the Taxpayer was a Kansas resident, the Taxpayer was not liable for Missouri income tax on the discharge.



INCOME TAX

David P. and Charlotte

S. Renfro v. Director of Revenue, Case No. 99-2520 RI (AHC, 3/14/2000).

David P. and Charlotte S. Renfro (Taxpayers) were Illinois residents for the entire 1996 tax year. Taxpayers received payments from his military retirement plan and earned wages from employment in Missouri during the year. Taxpayers calculated his Missouri non-resident percentage as 0.00%. The director adjusted the non-resident percentage to 57% based on the



Missouri wages and issued a final decision.

Taxpayers argued that the military pension was not subject to Missouri income tax because Mr. Renfro was an Illinois resident. The director asserted that the tax assessed was based only on the wages earned in Missouri.

The Administrative Hearing Commission (AHC) held that Missouri imposes income tax on the income of a nonresident individual that is derived from sources within Missouri. No tax was imposed on the military pay. The AHC concluded tax and interest were owed on Taxpayers' Missouri wages.



INCOME TAX

John G. Feld v. Director

of Revenue, Case No. 98-3478 RI (AHC, 5/13/2000).

John G. Feld (Taxpayer) in 1993 was a resident of Alton, Missouri, and received remuneration for his services from three separate entities. Taxpayer received W-2 forms from each employer showing the compensation paid, but he did not file a 1993 Missouri income tax return. In 1996, the director received IRS information indicating that Taxpayer did have federal adjusted gross income for 1993. The director issued a notice of deficiency for 1993 Missouri income tax.

Taxpayer asserted that the

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tax law applied only to Missouri residents and that he was a Missouri citizen rather than a resident. The Administrative Hearing Commission (AHC) held that Taxpayer status as a citizen did not alter the residency requirement.

Taxpayer claimed that he owed no Missouri income tax, as he did not have any federal adjusted gross income, although he received money for contract services. The AHC held that payments for services are taxable even if for contract services rather than as an employee. The AHC upheld the director's assessment of tax, interest, additions and penalties.



YIELD TAX

Green Tree Farm, Inc. v. Director of Revenue, 10 S. W. 3d 220 (MO. App. W. D. 2000).

Green Tree Farm, Inc., (Taxpayer) appealed the decision of the Administrative Hearing Commission (AHC) that found Taxpayer liable for a 6% yield tax on the harvest and sale of timber owned by it and enrolled in the Missouri Conservation Commission's Forest Croplands Program. The property had been enrolled in the Program in 1985. In 1994, the land was sold to the Roberts who then sold the property to Green Tree Farm, Inc., their solely owned corporation. Taxpayer did not report the harvesting

of the timber, but was paid the total contract price. Approximately 10% of the timber had been cut by the time of an inspection by the Conservation Department, whereupon the property's forest cropland status was canceled by notice to the Roberts, who had not reported the sale of the property to Taxpayer. The Department of Conservation



obtained a judgment against the Roberts and Green Tree Farm, Inc., in circuit court for property tax benefits received, penalties and a determination of the yield tax provided in Section 254.160, RSMo. The director then issued a final decision regarding the yield tax that was upheld on appeal to the AHC.

On appeal, Taxpayer argued that it did not receive proper notice of the cancellation of the Program when notice was sent to the Roberts, and that the yield tax was precluded. The Court held that under the State Forestry Law, no notice of cancellation is required in order to assess the

tax. Taxpayer had actual notice of the cancellation because the Roberts were the officers and registered agent for the corporation. Further, the issues of ownership, notice and cancellation had all been tried in the prior circuit court case and were precluded by collateral estoppel.

Taxpayer argued that there was inadequate evidence to support the AHC's determination of the yield tax owed because no stumpage report was filed by the taxpayer and the record showed that only 10% of the timber had been cut while the land was in the program. The Court held that the taxpayer could not avoid the yield tax by failing to file the required stumpage report. The Court also held that the AHC did not err in basing the yield tax on the full value of the contract price as no more specific evidence was provided by the taxpayer. The decision of the AHC was affirmed.

**Check out the
Department of
Revenue's
Web Site:**

<http://dor.state.mo.us/>

**for updates on new
and upcoming events
and systems!**

DOR Web Site Always "Under Construction"

by Kay Dinolfo, (573) 751-4584

With the addition of a full-time staffer, plus temporary staff for the summer, the DOR web site is undergoing several changes and improvements. Like most web sites, it's always "under construction," so we can better serve you.

The latest updates to the site that may interest readers of the *Tax Bulletin* include frequently asked questions and other information about sales and use tax audits. The information covers the entire topic of the performance of an audit and what business owners can expect when a DOR auditor comes calling.

Coming soon the web site will also include the full text of the actual manual that the Division of Taxation and Collection uses in training new auditors, or refreshing experi-



enced auditors. This comprehensive manual will be helpful

to business owners and tax departments who have questions about the taxability of particular transactions, or the necessity of retaining certain documentation. For convenience, the manual will include hyperlinked references to appropriate statutes and regulations.

The new web pages will include e-mail links to make it easier for you to contact Field Audit. Next time you have questions about your sales and use tax obligations, get your answers from the DOR web site at:
<http://www.dor.state.mo.us/>

New Filing Programs for 1999–2000

by Linda Bushman, (573) 751-7912

Approximately 2.6 million individual income tax returns were processed for the 1999 tax year. With the close of the fiscal year, the department is already working on the 2000 tax year forms and systems.

The department has initiated many new filing techniques in the last two years with great success. We will be enhancing many of these to enable more returns to take advantage of the streamlined systems. 2D bar coded returns were first introduced as a pilot program for the 1999 1040 tax return. 103,495 returns were processed using this feature. 2D bar coded returns eliminate key entry and offer faster processing for the department, enabling refunds to be issued to the taxpayer quicker. The department will be offering this method of filing to all software vendors for the 2000 tax year.

The internet web filing of individual income tax returns will also be expanded for the 2000 tax year. A pilot program was initiated for

the 1999 tax year with 258 filers using this program. An update on the web filings will be in the next issue of the *Tax Bulletin* or please check the web at <http://www.dor.state.mo.us/> for all the latest news.

If you have comments or would like to have further information on either of these two programs please email:
Linda_Bushman@mail.dor.state.mo.us



Fastest in Nation

by Mike Davis, (573) 751-8913

This tax season was the second year for the department's redesigned income tax process. "Speed-up" was implemented last tax season as a new approach that eliminated the age old method of "batch" processing. By having each employee perform all of the tasks of working a return (from removing the return from the envelope to data entering the return into the computer), numerous handoffs were eliminated. In 1999, this new process resulted in refunds being issued in an average of eight days for returns (without errors) received prior to April 15, 1999.

The department built from its success in 1999 and made additional improvements to the process for this tax season. These changes resulted in refunds being issued in an average of 4.7 days for returns

(without errors) received by April 17. However, the department's goal this year was to issue even quicker refunds **and** process taxpayer payment's more quickly. The real challenge came when the large



volume of paid and refund returns were received the week of April 17.

The department came up with an alternative method of payment processing that only minimally impacted the processing of refunds. Returns

coming in with payments had the payments removed and payment vouchers immediately created. The payments and vouchers were then processed through a Remittance Processing System and downloaded to the department's tax system the next day. This new method resulted in deposits being made in an average of 1.7 days for returns received by April 17, and 6.13 days for returns received after April 17.

This tax season was definitely a success. Current reports show Missouri was the fastest in the nation at issuing income tax refunds on paper return filings. The department's plans for next tax season include redesigning the processing of Property Tax Credit Claims.

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Entertainers attached and pay the taxes withheld to the Director of Revenue.

A nonresident professional entertainer is a corporation registered outside this state, or a person who is not a resident of Missouri as defined by Section 143.101, RSMo, who, for compensation paid to an individual or other entity, performs any vocal, instrumental, musical, comedy, dramatic, dance or other performance in Missouri before a live audi-

ence. Nonresident professional entertainers also include any person traveling with the entertainers and performing services on behalf of the nonresident entertainer.

Any nonresident entertainers outside of Missouri that does not comply with the withholding of the two percent (2%) nonresident entertainer tax, is considered a transient employer as defined in Section 285.230, RSMo, and is required to file a financial

assurance instrument pursuant to Section 285.230, RSMo, and 12 CSR 10-2.017.

One of the most frequently asked questions pertaining to this law is whether not-for-profit corporations are exempt from this tax. The answer is no. The not-for-profit corporation should pass the 2% withheld to the employees of the corporation who enter the state of Missouri.

Rules Take Effect

by Office of Legislation and Regulations, (573) 751-2110

Several rules relating to taxes have recently gone into effect, or will become effective in the near future. A short recap of each rule is listed below along with the rule number and remarks about the effective date of the regulation.

12 CSR 10-101.500 — Burden of Proof.

Section 136.300, RSMo, addresses which party has the burden of proof on any factual issue relevant to ascertaining the liability of a taxpayer. Sections 32.200, Article V, Section 2; 144.210; and 144.635, RSMo, also address the burden of proof and in particular the use of exemption certificates to meet the burden. Section 621.050, RSMo, addresses which party has the burden of proof in a proceeding before the administrative hearing commission. This rule explains how these laws work together to determine which party has the burden of proof in a dispute involving sales or use tax.

Proposed Rule — The final Order of Rulemaking appeared in the May 15, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of June 30, 2000.

12 CSR 10-111.060 — Material Recovery Processing Plant Exemption. Section 144.030.2(4), RSMo, exempts from taxation machinery and equipment and certain materials and supplies used to establish new, or to replace or expand existing, material recovery processing plants in this state. This rule explains the elements that must be met in order to qualify for the exemption.

Proposed Rule — The final Order of Rulemaking appeared in the May 1, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of June 30, 2000.

12 CSR 10-110.900 — Farm Machinery and Equipment Exemptions. Sections 144.030.2(22), 144.045.1 and 144.047, RSMo, exempt certain farm machinery, equipment, repair parts and lubricants from taxation. This

rule explains which items qualify for these exemptions.

Proposed Rule — The final Order of Rulemaking appeared in the May 1, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of June 30, 2000.

12 CSR 10-2.015 — Employers' Withholding of Tax. This amendment is to bring the Form MO W-3 due date into agreement with the Internal Revenue Service due date for Form MO W-3, change the threshold for monthly filers and bring the retention of undeliverable employee Form W-2s into agreement with the Internal Revenue Service.

Emergency Amendment — Published in the *Missouri Register* 01/03/00, effective 12/10/99, expires 05/06/00.

Proposed Amendment — The final Order of Rulemaking appeared in the May 1, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of June 30, 2000.

12 CSR 10-103.200 — Isolated or Occasional Sale. Section 144.020.1(1), RSMo, imposes a tax on sellers engaged in the business of selling tangible personal property or rendering taxable service at retail. Section 144.010.1(2), RSMo, excludes certain isolated or occasional sales from tax. This rule explains when a sale is a nontaxable, isolated or occasional sale.

Proposed Rule — The final Order of Rulemaking appeared in the June 1, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of July 30, 2000.

12 CSR 10-103.610 — Sales of Advertising. This rule explains, pursuant to Section 144.034, RSMo, when sales of advertising are sales of a service, which are not subject to tax, and when such sales of advertising are sales of tangible personal property, which are subject to tax.

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Proposed Rule — The final Order of Rulemaking appeared in the June 1, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of July 30, 2000.

12 CSR 10-110.910 — Livestock.

Sections 144.030.2(1), 144.030.2(7), 144.030.2(22), 144.030.2(29), 144.030.2(32), RSMo, exempt from taxation certain livestock, feed and feed additives, medicines and vaccines, and pesticides and herbicides. This rule explains the requirements that must be met to qualify for these exemptions.

Proposed Rule — The final Order of Rulemaking appeared in the June 15, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of July 30, 2000.

12 CSR 10-110.920 — Sales of Grains, Seed, Pesticides, Herbicides and Fertilizers. Sections 144.030.2(1), (22), and (32), RSMo, exempt the sales of certain grains, seed, pesticides, limestone, fertilizer and herbicides. This rule explains the requirements that must be met in order to qualify for these exemptions. Section 144.020.1(3), RSMo, taxes certain utility services. This rule explains the application of this taxing provision for sales to agricultural consumers.

Proposed Rule — The final Order of Rulemaking appeared in the June 15, 2000, *Missouri Register*. Published in the *Code of State Regulations* with an effective date of July 30, 2000.

12 CSR 10-115.100 — Bad Debts Credit or Refund. Sections 144.190 and 144.696, RSMo, provide for refund of overpayments. Section 144.220, RSMo, sets forth the law on the statute of limitations. This rule explains how to claim a credit or refund for tax paid on a sale that has become a bad debt.

Proposed Rule — Published in the June 1, 2000 *Missouri Register*. Comment period will conclude on July 1, 2000.

Proposed Rescissions — The Sales/Use Tax Rules listed below are being rescinded, and will be replaced with new rules. They were pub-

lished in the June 1, 2000, *Missouri Register*. Comment period concluded on July 1, 2000.

12 CSR 10-3.098 — **Drugs and Medicine**

12 CSR 10-3.516 — **Application for Refund/Credit— Amended Returns**

12 CSR 10-3.518 — **Claim Form**

12 CSR 10-3.520 — **Who Should Request Refund**

12 CSR 10-3.526 — **Refund Rather than Credit**

12 CSR 10-3.528 — **No Interest on Refund/Credit**

12 CSR 10-3.530 — **Unconstitutional Taxes**

12 CSR 10-3.852 — **Orthopedic and Prosthetic Devices, Insulin and Hearing Aids**

12 CSR 10-4.255 — **Who Should Request Refund**

12 CSR 10-4.260 — **Claim Form**

12 CSR 10-4.265 — **Refund Rather than Credit**

12 CSR 10-4.275 — **Application Required**

12 CSR 10-4.330 — **Application for Refund/Credit Amended Returns**

12 CSR 10-5.080 — **Refund Procedures**

12 CSR 10-11.150 — **Refund Procedures**

Proposed Rescissions — The Sales/Use Tax Rules listed below are being rescinded, and will be replaced with new rules. They were published in the July 3, 2000, *Missouri Register*. Comment period will conclude on August 2, 2000.

12 CSR 10-4.145 — **Audit, No Credit**

12 CSR 10-3.004 — **Isolated or Occasional Sales**

12 CSR 10-3.005 — **Isolated or Occasional Sales by Businesses**

12 CSR 10-3.006 — **Isolated or Occasional Sales vs. Doing Business — Examples**

12 CSR 10-3.007 — **Partial Liquidation of Trade or Business**

12 CSR 10-3.166 — **Seller of Boats**

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- 12 CSR 10-3.172 — **Advertising Signs**
- 12 CSR 10-3.248 — **Sales to the United States Government**
- 12 CSR 10-3.260 — **Nonappropriated Activities of Military Services**
- 12 CSR 10-3.262 — **Government Suppliers and Contractors**
- 12 CSR 10-3.274 — **Farm Machinery and Equipment**
- 12 CSR 10-3.278 — **Agricultural Feed and Feed Additives**
- 12 CSR 10-3.282 — **Sales of Seed, Pesticides and Fertilizers**
- 12 CSR 10-3.284 — **Poultry Defined**
- 12 CSR 10-3.286 — **Livestock Defined**
- 12 CSR 10-3.290 — **Sellers of Poultry**
- 12 CSR 10-3.332 — **United States Government Suppliers**
- 12 CSR 10-3.336 — **Animals Purchased for Feeding or Breeding Purposes**
- 12 CSR 10-3.590 — **Advertising Business**
- 12 CSR 10-3.834 — **Titling and Sales Tax Treatment of Boats**
- 12 CSR 10-3.850 — **Veterinary Transactions**
- 12 CSR 10-3.866 — **Bulldozers for Agricultural Use**

12 CSR 10-103.600 — Sales of Tangible Personal Property and Services. Section 144.020.1, RSMo, provides those sales of tangible personal property and certain enumerated services are subject to tax. Section 144.010.1(3), RSMo, defines which charges are subject to tax when included in the sale price of tangible personal property. This rule explains which charges are subject to tax when a transaction involves the sale of a service or both tangible personal property and a nontaxable service.

Proposed Rule — To be published in the July 17, 2000, *Missouri Register*. Comment period will conclude on August 16, 2000.

12 CSR 10-104.020 — Sales and Use Tax

Bonds. Section 144.087, RSMo, requires all applicants for a retail sales tax license and all licensees in default in filing a return and paying taxes when due to file a bond in an amount to be determined by the Director of Revenue. Section 144.625, RSMo, authorizes the department to require a bond from out-of-state vendors responsible for remitting vendor's use tax. This rule explains how to calculate and submit a bond, the different types of bonds that may be filed with the department, and how to obtain a bond refund.

Proposed Rule — To be published in the July 17, 2000, *Missouri Register*. Comment period will conclude on August 16, 2000.

12 CSR 10-113.300 — Temporary Storage. Section 144.610, RSMo, imposes use tax on the sale of tangible personal property that is purchased for use, storage or consumption in this state. Section 144.620, RSMo, creates a presumption that tangible personal property sold for delivery in or transportation to Missouri is for use, storage or consumption in Missouri unless otherwise excluded. Sections 144.605. (10) and (13), RSMo, define the incidence of "storage" and "use". These sections provide an exclusion from use tax for property that is purchased for temporary storage in Missouri with the intent to subsequently use the property outside Missouri. This rule interprets this exclusion.

Proposed Rule — To be published in the July 17, 2000, *Missouri Register*. Comment period will conclude on August 16, 2000.

If you would like to receive a copy of any of the rules listed above, please contact the Secretary of State, Administrative Rules Division, P.O. Box 778, Jefferson City, MO 65102.

Check the Web for Rules and Regulations at the Missouri Secretary of State's Web Site:

<http://mosl.sos.state.mo.us/>

2000 Missouri Tax Conference

The Department of Revenue and Associated Industries of Missouri will be presenting a 2000 Missouri Tax Conference on October 19 and 20, 2000, at the Holiday Inn Sunspree Resort, Lake Ozark, Missouri.

This conference involving both taxpayers and government officials will provide helpful information to all levels of state and local taxpayers and tax professionals. Participants will depart with new knowledge that will benefit their company or client. Topics will include some of the following:

- *Advanced and Technical Issues* — These topics will focus on various tax types and industry classifications — hot topics, recent updates, current property tax developments, tax credit applicability and applications; and planning ideas.

- *Practitioner Issues and Workshops* — Basic session; estate tax planning; business expansions and site selections; unemployment tax update and available planning opportunities.
- *Tax Policy and Audit Issues* — Sales and use tax update; unclaimed property collection efforts; utility deregulation; audit sampling methods; and automated compliance assistance.

In addition, a general issues panel discussion and a legislative issues panel discussion are planned.

For registration forms and additional information, please contact the Associated Industries of Missouri, P.O. Box 1709, Jefferson City, MO 65102 or (573) 634-2246 or <http://dor.state.mo.us/taxconf/taxconf.htm>

Free Upcoming Business Tax Training Seminars

by Randy Sullens, (573) 751-3958

The Missouri Department of Revenue offers free business tax training seminars to familiarize new businesses with tax related issues. The seminars cover sales tax, withholding tax and business tax registration. Listed below are upcoming seminars:

COLUMBIA AREA

September 13, 2000 / October 18, 2000 / November 8, 2000
9:30 a.m. to 11:30 a.m.
Columbia Tax Assistance Center
1500 Vandiver Drive, Room 113
Columbia, MO 65202
(573) 884-3814

CAPE GIRARDEAU AREA

November 17, 2000
1:00 p.m. to 3:00 p.m.
Cape Girardeau Tax Assistance Center
3102 Blattner Drive, Suite 102
Cape Girardeau, MO 63702-0909
(573) 290-5850

JEFFERSON CITY AREA

August 9, 2000 /
September 13, 2000 / October 11, 2000 / November 8, 2000

All seminars are 10:00 a.m. to 12:00 p.m.
Jefferson City Tax Assistance Center
2018 William Street
Jefferson City, MO
(573) 751-7191

JOPLIN AREA

September 12, 2000 /
November 14, 2000
9:00 a.m. to 11:00 a.m.
Joplin Tax Assistance Center
1110 East Seventh St., Suite 400
Joplin, MO 64801-2286
(417) 629-3070

KANSAS CITY AREA

August 11, 2000 /
November 17, 2000
2:00 p.m. to 4:00 p.m.

Kansas City Tax Assistance Center
615 East 13th Street, Room 127
Kansas City, MO 64106-4039
(816) 889-2944

ST. JOSEPH AREA

October 25, 2000
1:00 p.m. to 3:00 p.m.
St. Joseph Tax Assistance Center
525 Jules, Room 314
St. Joseph, MO 64501-1900
(816) 387-2230

ST. LOUIS AREA

August 9, 2000 /
October 11, 2000
2:00 p.m. to 4:00 p.m.
St. Louis Tax Assistance Center
2510 South Brentwood, Suite 300
Brentwood, MO 63144-2391
(314) 301-1660

Seating is limited in some areas — please contact one of the Tax Assistance Centers at the phone numbers listed above to make your reservation.

Tax Calendar

Due Dates for July – October 2000

July

- 3 Motor Fuel Suppliers Report
- 6 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 12 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 17 Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Report
- 19 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 20 Cigarette Tax Cash Account Return
- 26 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 31 Monthly Sales/Use Tax Returns
Quarterly Sales/Use Tax Returns
Quarterly Withholding Returns
Monthly Withholding Returns
Motor Fuel/Distributor Reports
Tire Fee
Quarterly Insurance Tax Payments

August

- 2 Motor Fuel Suppliers Report
- 3 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 10 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 15 Individual Income Tax with
Automatic Extension

- Monthly Withholding Returns
Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Report
- 18 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 21 Monthly Sales/Use Tax Returns
Cigarette Tax Cash Accounts
- 25 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 31 Motor Fuel/Distributor Report

September

- 1 Quarterly Insurance Tax Payment
- 5 Motor Fuel Suppliers Report
- 6 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 12 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 15 Estimated Tax Declarations for
Individuals
Declaration of Estimated for Calendar
Year Corporations
Monthly Withholding Returns
Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Report
Calendar Year Cooperatives with
Extension
- 20 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
Monthly Sales/Use Tax Returns
Cigarette Tax Cash Accounts Return
- 27 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding

Payment

- 29 Motor Fuel/Distributor Reports

October

- 2 Motor Fuel Suppliers Report
- 4 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 12 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 16 Corporation Income Tax with
Automatic Extension
Cigarette Tax Credit Account and
Return
Other Tobacco Products
Monthly Reports
- 18 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 20 Cigarette Tax Cash Accounts Return
- 25 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 30 Quarterly Insurance Tax Payments
- 31 Monthly Sales/Use Tax Returns
Quarterly Sales/Use Tax Returns
Quarterly Withholding Returns
Monthly Withholding Returns
Motor Fuel/Distributor Reports
Tire Fee